

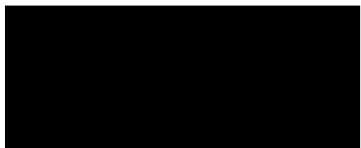


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



FILE: [REDACTED] Office: Manila

Date: MAR 10 2000

IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under §
212(g) of the Immigration and Nationality Act, 8 U.S.C. 1182(g)

IN BEHALF OF APPLICANT:



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Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

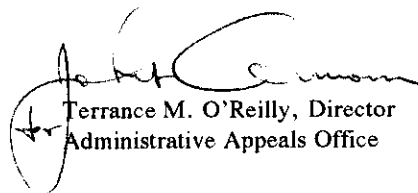
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant is a native and citizen of the [REDACTED] who was found to be inadmissible to the United States by a consular officer under former § 212(a)(1)(A)(ii)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(1)(A)(i), presently encoded as § 212(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. 1182(a)(1)(A)(iii)(II), as an alien who is determined to have a mental disorder and associated harmful behavior. The applicant is the daughter of a lawful permanent resident. The applicant seeks the above waiver under § 212(g) of the Act, 8 U.S.C. 1182(g), in order to join her father in the United States.

The acting officer in charge denied the application after determining the applicant failed to demonstrate that her condition is in remission and the harmful behavior is unlikely to recur.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) (A) HEALTH-RELATED GROUNDS.-IN GENERAL.-Any alien...

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)-

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior,...is inadmissible.

Section 212(g) BOND AND CONDITIONS FOR ADMISSION OF ALIEN INADMISSIBLE ON HEALTH RELATED GROUNDS.-the Attorney General may waive the application of-

(1) of subsection (a)(1)(A)(i) in the case of any alien who-

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted

for permanent residence, or an alien who has been issued an immigrant visa, or

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa....

8 C.F.R. 212.7(b) contains the regulations regarding an alien with certain mental conditions who is eligible for an immigrant visa but requires the approval of a waiver of grounds of inadmissibility. The regulations stipulate that the applicant or sponsoring family member shall submit a waiver application and a statement to the appropriate consular or Service office indicating that arrangements have been made to provide the alien's complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; findings as to the alien's current physical condition, including reports of chest X-ray examination and of serologic test for syphilis, and other pertinent diagnostic tests, and findings as to the alien's current mental condition, with information as to prognosis and life expectancy and with a report of a psychiatric examination conducted by a psychiatrist who shall, in case of mental retardation, also provide an evaluation of the alien's intelligence. For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery. The medical report is then forwarded to the U.S. Public Health Service for review.

The record reflects that the application and a March 21, 1997, report regarding a complete evaluation of the applicant's condition, including all the follow-up procedures required after the alien enters the United States as specified in 8 C.F.R. 212.7(b)(4)(ii), were reviewed by the Center for Disease Control.

The applicant in this matter has complied with the outstanding regulations regarding her present condition and follow-up procedures and has received supportive letters from her teachers. Documentation in the record also reflects that family unification would be of utmost benefit to the applicant in assisting with her present and future progress. Therefore, she has established her eligibility for the benefit sought. Accordingly, the officer in charge's decision will be withdrawn.

ORDER: The appeal is sustained. The officer in charge's decision is withdrawn, and the application is approved.